

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JUDE TRAZO, et al.,

Plaintiffs,

v.

NESTLÉ USA, INC.,

Defendant.

Case No. 5:12-cv-02272-PSG

**ORDER GRANTING MOTION FOR  
LEAVE TO FILE MOTION FOR  
RECONSIDERATION**

**(Re: Docket No. 115)**

Earlier in this case, the court dismissed Plaintiff Jude Trazo's claim for restitution/unjust enrichment.<sup>1</sup> After observing that the California and other federal courts have divided on the viability of such a claim under California law, the court sided with the doubters. The court specifically held that "[g]iven that Plaintiffs' quasi-contract theory rests on the same allegations already covered by their other claims, which also provide for restitution as a remedy, the claim is 'merely duplicative of statutory or tort claims' and must be dismissed."<sup>2</sup>

Earlier this month, the Ninth Circuit held otherwise. In *Astiana v. Hain Celestial Group*. The appellate court reversed the trial court's dismissal of the plaintiff's unjust enrichment claim.<sup>3</sup>

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<sup>1</sup> See Docket No. 74 at 20-21.

<sup>2</sup> *Id.* at 21 (citations omitted).

<sup>3</sup> See Case No. 12-17596, 2015 WL 1600205, at \*7 (9th Cir. Apr. 10, 2015).

1 The Ninth Circuit explained in no uncertain terms that “[t]o the extent the district court concluded  
2 that the cause of action was nonsensical because it was duplicative of or superfluous to Astiana’s  
3 other claims, this is not grounds for dismissal.”<sup>4</sup>

4 Whatever this court’s own views may be, it fully appreciates that whenever the appellate  
5 courts say jump, the only remaining question is how high. And so it appears here. Plaintiff’s  
6 motion for leave to file a motion for reconsideration is GRANTED. No later than April 30, 2015,  
7 each party may file a brief of up to five pages on the specific issue of whether *Astiana* requires that  
8 Plaintiff be allowed to pursue a duplicative claim for unjust enrichment. No hearing shall be held.  
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10 **SO ORDERED.**

11 Dated: April 24, 2015

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13 PAUL S. GREWAL  
14 United States Magistrate Judge  
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28 <sup>4</sup> *Id.*